

Exhibit 1

LYNCH ICHIDA THOMPSON KIM & HIROTA

TIMOTHY J. HOGAN 5312-0
1132 Bishop Street, Suite 1405
Honolulu, Hawaii 96813
Tel. No. (808) 528-0100
Fax No. (808) 528-4997
E-mail: tjh@loio.com

Attorney for Plaintiff
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;)	Civ. No. CV03 00385 SOM-LEK
)	(Copyright)
Plaintiff,)	PLAINTIFF WAYNE BERRY'S
vs.)	ANSWERS TO POST-
)	CONFIRMATION TRUST FOR
HAWAIIAN EXPRESS SERVICE,)	FLEMING COMPANIES, INC.'S
INC., a California corporation; et al.)	SECOND SET OF
)	INTERROGATORIES TO
Defendants.)	PLAINTIFF WAYNE BERRY
)	

**PLAINTIFF WAYNE BERRY'S ANSWERS TO
POST-CONFIRMATION TRUST FOR FLEMING
COMPANIES, INC.'S SECOND SET OF
OF INTERROGATORIES TO PLAINTIFF WAYNE BERRY**

COMES NOW Plaintiff Wayne Berry and submits his answers to Post-Confirmation Trust for Fleming Companies, Inc.'s Second Set of Interrogatories to Plaintiff Wayne Berry as follows:

INTERROGATORIES

INTERROGATORY NO. 7

State all damages you claim for Fleming's alleged infringing activity between April 1, 2003 and June 9, 2003.

ANSWER:

Objection. The terms "damages" "Fleming" and "infringing activity" in this context are vague and ambiguous. Mr. Berry has claims that are more than copyright infringement under Title 17. In addition, Mr. Berry is a victim of criminal conduct that is not relevant to monetary damages in this proceeding but constitute damage to him that is redressible by law under both Hawaii and Federal statutes.



Not waiving the above objection, and incorporating the general objections, *see* Report of Thomas Ueno, CPA. In summary, a per container license fee of no less than \$1,772 times the number of containers shipped through the system of 600 per week, \$21,252,571 plus all profits derived from the use of the Berry software of approximately \$20,000,000. Additionally punitive damages as permitted by Hawaii law, attorneys fees, prejudgment interest and treble damages. Thomas Ueno's expert report is incorporated by this reference as supplemented.

INTERROGATORY NO. 8

State all factual bases supporting your responses to Interrogatory No. 7, above.

ANSWER:

Fleming had no license for the software it was using and was therefore, infringing. Mark Dillon testified that, but for the Berry software, the profits could

not be obtained. Fleming transferred Berry Technology to C&S and to other yet identified third parties.

See answer to No. 7 above.

INTERROGATORY NO. 9

Identify all documents supporting your responses to Interrogatory No. 7, above.

ANSWER:

See No. 7 Above. All documents disclosed in this case. All documents identified in Mr. Ueno's report including all documents produced in this case, transcripts of proceeding, deposition transcripts and all filed documents and correspondence. In addition, Mr. Berry identifies all documents produced in Wayne Berry v. Fleming Companies, Inc. and the Fleming Companies, Inc. Bankruptcy that are related to issues of profit, costs container use and gross revenue. Also, Fleming and C&S' financials that they are to produce.

The Expert of Report of Thomas Ueno

The entire docket of the Fleming Bankruptcy case

All correspondence among the co-conspirators

All financial records of all Cohen Family enterprises.

All financial records of each person who receives the profits derived from the infringement.

Matson records of shipments

Horizon Lines records of shipments

GET tax forms of all Hawaii defendants.

VERIFICATION

STATE OF HAWAII)
)
COUNTY OF HONOLULU)

Wayne Berry, being first duly sworn upon oath, deposes and says that he has read the foregoing answers to interrogatories, knows the contents thereof and that the same are true to the best of his/her knowledge and belief.

Wayne Berry

Subscribed and sworn to before me
this 22nd day of April

Print Name: Jane Sung
Notary Public, State of Hawaii
My commission expires 3/18/2009

